

## REMARKS

The present application has been reviewed in light of the Office Action dated June 17, 2003, and an interview, by telephone, that one of Applicant's attorneys conducted with Examiner Tsegaye on September 9, 2004. Claims 1-15 are presented for examination. Claims 1, 2, 13, and 14 have been amended to define still more clearly what Applicant regards as his invention, in terms that distinguish over the art of record. Claim 15 has been added to provide Applicant with a more complete scope of protection. Claims 1, 13, 14, and 15 are in independent form. Favorable reconsideration is requested.

The Office Action rejected Claims 1-14 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,233,251 (Kurobe et al.) in view of U.S. Patent No. 5,956,729 (Goetz et al.). Applicant respectfully traverses this rejection and submits that independent Claims 1, 13, and 14, together with the claims dependent therefrom, are patentably distinct from the cited prior art for at least the following reasons.

An aspect of the present invention set forth in Claim 1 is directed to a communication apparatus that performs data communication via a communication network. The apparatus includes a packet transmitter adapted to transmit image data in packets and to transmit sound data in packets, wherein the sound data is divided into packets of invariable packet size and the image data is divided into packets of variable packet size. The apparatus also includes a detector adapted to detect an interval of sound data to be transmitted in packets and a controller adapted to decrease the variable packet size of the packets of image data to be transmitted, in proportion to a decrease in the interval of sound data to be transmitted in packets, as detected by said detector.

Among other important features of Claim 1 is that the controller decreases

the variable packet size of the packets of image data to be transmitted, in proportion to a decrease in the interval of sound data to be transmitted in packets, as detected by the detector.

Kurobe et al., as understood by Applicant, relates to a multiplex transmission method and system, and audio jitter absorbing method used therein. The Examiner stated in the Office Action at page 2 that Kurobe “does not expressly disclose . . . a controller for controlling the variable packet size of the packets of image data to be transmitted by the packet transmitter, according to a detection result of the detector” and also that the controller is obvious to a person of ordinary skill in the art. Applicant submits that Kurobe et al. discusses, with reference to Figure 1, that when there is sound data, video data is a SHORT FRAME (speech), and where there is no sound data, video data is a LONG FRAME (silent) (see, e.g., col. 25, line 66, to col. 27, line 59; in particular, col. 26, line 55 to 57). Applicant submits, however, that nothing has been found in Kurobe et al. that would teach or suggest a controller that decreases the variable packet size of the packets of image data to be transmitted, in proportion to a decrease in the interval of sound data to be transmitted in packets, as detected by the detector, as recited in Claim 1.

Goetz et al., as understood by Applicant, relates to a multimedia file, supporting multiple instances of media types, and method for forming the same. Applicant submits that even if Goetz et al. teaches or suggest the that image data is divided into packets dependent upon a ratio of an amount of image data to an amount of sound data, this feature has been deleted from Claim 1 and Applicant submits that nothing has been found in Goetz et al., or stated in the Office Action, that would teach or suggest the controller, as recited in Claim 1.

Accordingly, Applicant submits that at least for these reasons, Claim 1 is patentable over the cited prior art.

Claims 13 and 14 are method and storage medium claims that correspond to apparatus Claim 1 and are believed to be allowable at least for the same reasons as discussed above in relation to Claim 1.

The other rejected claims in this application depend from Claim 1 and therefore are submitted to be patentable for at least the above reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

Applicant submits that Claim 15 is allowable over the cited prior art at least because it includes a controller adapted to control the variable packet size of the image data based on the invariable packet size of the sound data, as detected by the detector. When the detector detects the amount of sound data, the controller changes the packet size of the image data to be substantially equal to the packet size of the sound data. However, when the detector does not detect sound data, the controller changes the packet size of the image data to a maximum size. Support for these features can be found in the specification at least from page 8, line 18, to page 9, line 12.

Applicant also submits that the Office Action states, and the Examiner repeated, at several points during her telephone interview with Applicant's attorney, that she considered that the features of the claims are "obvious to one of ordinary skill in the art." Applicant reminds the Examiner that the test for obviousness is discussed in the M.P.E.P., Section 2141, 35 U.S.C. 103; *the Graham Factual Inquiries*, and requires that

"[w]hen applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined."

Applicant does not believe that these requirements were discussed in detail in the Office Action. Therefore, Applicant requests that if another Office Action is issued in this case that includes an obviousness-type rejection, that the Examiner include in such Office Action an analysis that follows points (A)-(D) stated above.

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Applicant's undersigned attorney may be reached in our New York Office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address listed below.

Respectfully submitted,



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